

Todd M. Friedman (SBN 216752)  
Adrian R. Bacon (SBN 280332)  
LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
21550 Oxnard St., Suite 780  
Woodland Hills, CA 91367  
Phone: 323-306-4234  
Fax: 866-633-0228  
[tfriedman@toddfllaw.com](mailto:tfriedman@toddfllaw.com)  
[abacon@toddfllaw.com](mailto:abacon@toddfllaw.com)

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ZACHARY DEG, individually and on	)	Case No.
behalf of all others similarly situated,	)	
	)	<b><u>CLASS ACTION</u></b>
Plaintiff,	)	
	)	<b>COMPLAINT FOR VIOLATIONS</b>
vs.	)	<b>OF:</b>
	)	
ALL WEB LEADS, INC.; and DOES 1	)	1. NEGLIGENT VIOLATIONS
through 10, inclusive,	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]
Defendant.	)	2. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]
	)	3. NEGLIGENT VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
	)	4. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
	)	
	)	<b><u>DEMAND FOR JURY TRIAL</u></b>
	)	

Plaintiff ZACHARY DEG (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based

upon personal knowledge:

### **NATURE OF THE CASE**

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of ALL WEB LEADS, INC. (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

### **JURISDICTION & VENUE**

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, an individual residing in California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a company incorporated in the state of Delaware. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Eastern District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does business within the State of California and Plaintiff resides within the County of Alameda.

### **PARTIES**

4. Plaintiff, ZACHARY DEG (“Plaintiff”), is an individual residing in Stockton, California, and is a “person” as defined by 47 U.S.C. § 153 (39).

5. Defendant, ALL WEB LEADS, INC. (“AWL”), is an entity in the internet marketing service industry, and is a “person” as defined by 47 U.S.C. §

153 (39).

6. The above named Defendant, and its subsidiaries and agents, are collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

### **FACTUAL ALLEGATIONS**

8. Beginning in or around June of 2019, Defendant contacted Plaintiff on Plaintiff’s cellular telephone numbers ending in -1996 in an attempt to solicit Plaintiff to purchase Defendant’s services.

9. Defendant used an “automatic telephone dialing system” as defined by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

10. Defendant contacted or attempted to contact Plaintiff from telephone numbers belonging to Defendant, including without limitation (808) 425-9724.

11. Defendant’s calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

12. Defendant’s calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

1           13. During all relevant times, Defendant did not possess Plaintiff's "prior  
2 express consent" to receive calls using an automatic telephone dialing system or an  
3 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §  
4 227(b)(1)(A).

5           14. Furthermore, Plaintiff's cellular telephone numbers ending in -1996  
6 has been on the National Do-Not-Call Registry well over thirty (30) days prior to  
7 Defendant's initial calls.

8           15. Defendant placed multiple calls soliciting its business to Plaintiff on  
9 its cellular telephones beginning in or around June of 2019.

10           16. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
11 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

12           17. Plaintiff received numerous solicitation calls from Defendant within a  
13 12-month period.

14           18. Despite Plaintiff's number being registered with the National Do-Not-  
15 Call Registry, Defendant continued to call Plaintiff in an attempt to solicit its  
16 services and in violation of the National Do-Not-Call provisions of the TCPA.

17           19. Upon information and belief, and based on Plaintiff's experiences of  
18 being called by Defendant after requesting they stop calling, and at all relevant  
19 times, Defendant failed to establish and implement reasonable practices and  
20 procedures to effectively prevent telephone solicitations in violation of the  
21 regulations prescribed under 47 U.S.C. § 227(c)(5).

22                           **CLASS ALLEGATIONS**

23           20. Plaintiff brings this action individually and on behalf of all others  
24 similarly situated, as a member the four proposed classes (hereafter, jointly, "The  
25 Classes"). The class concerning the ATDS claim for no prior express consent  
26 (hereafter "The ATDS Class") is defined as follows:

27                           All persons within the United States who received any  
28 solicitation/telemarketing telephone calls from

1 Defendant to said person's cellular telephone made  
2 through the use of any automatic telephone dialing  
3 system or an artificial or prerecorded voice and such  
4 person had not previously consented to receiving such  
5 calls within the four years prior to the filing of this  
6 Complaint

7 21. The class concerning the National Do-Not-Call violation (hereafter  
8 "The DNC Class") is defined as follows:

9 All persons within the United States registered on the  
10 National Do-Not-Call Registry for at least 30 days, who  
11 had not granted Defendant prior express consent nor had  
12 a prior established business relationship, who received  
13 more than one call made by or on behalf of Defendant  
14 that promoted Defendant's products or services, within  
15 any twelve-month period, within four years prior to the  
16 filing of the complaint.

17 22. Plaintiff represents, and is a member of, The ATDS Class, consisting  
18 of all persons within the United States who received any solicitation telephone calls  
19 from Defendant to said person's cellular telephone made through the use of any  
20 automatic telephone dialing system or an artificial or prerecorded voice and such  
21 person had not previously not provided their cellular telephone number to  
22 Defendant within the four years prior to the filing of this Complaint.

23 23. Plaintiff represents, and is a member of, The DNC Class, consisting  
24 of all persons within the United States registered on the National Do-Not-Call  
25 Registry for at least 30 days, who had not granted Defendant prior express consent  
26 nor had a prior established business relationship, who received more than one call  
27 made by or on behalf of Defendant that promoted Defendant's products or services,  
28 within any twelve-month period, within four years prior to the filing of the  
complaint.

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1        24. Defendant, their employees and agents are excluded from The  
2 Classes. Plaintiff does not know the number of members in The Classes, but  
3 believes the Classes members number in the thousands, if not more. Thus, this  
4 matter should be certified as a Class Action to assist in the expeditious litigation of  
5 the matter.

6        25. The Classes are so numerous that the individual joinder of all of its  
7 members is impractical. While the exact number and identities of The Classes  
8 members are unknown to Plaintiff at this time and can only be ascertained through  
9 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
10 The Classes includes thousands of members. Plaintiff alleges that The Classes  
11 members may be ascertained by the records maintained by Defendant.

12        26. Plaintiff and members of The ATDS Class were harmed by the acts of  
13 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
14 and ATDS Class members via their cellular telephones thereby causing Plaintiff  
15 and ATDS Class members to incur certain charges or reduced telephone time for  
16 which Plaintiff and ATDS Class members had previously paid by having to retrieve  
17 or administer messages left by Defendant during those illegal calls, and invading  
18 the privacy of said Plaintiff and ATDS Class members.

19        27. Common questions of fact and law exist as to all members of The  
20 ATDS Class which predominate over any questions affecting only individual  
21 members of The ATDS Class. These common legal and factual questions, which  
22 do not vary between ATDS Class members, and which may be determined without  
23 reference to the individual circumstances of any ATDS Class members, include,  
24 but are not limited to, the following:

- 25            a. Whether, within the four years prior to the filing of this  
26                Complaint, Defendant made any telemarketing/solicitation call  
27                (other than a call made for emergency purposes or made with  
28                the prior express consent of the called party) to a ATDS Class

1 member using any automatic telephone dialing system or any  
2 artificial or prerecorded voice to any telephone number  
3 assigned to a cellular telephone service;

4 b. Whether Plaintiff and the ATDS Class members were damaged  
5 thereby, and the extent of damages for such violation; and

6 c. Whether Defendant and their agents should be enjoined from  
7 engaging in such conduct in the future.

8 28. As a person that received numerous telemarketing/solicitation calls  
9 from Defendant using an automatic telephone dialing system or an artificial or  
10 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting  
11 claims that are typical of The ATDS Class.

12 29. Plaintiff and members of The DNC Class were harmed by the acts of  
13 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
14 and DNC Class members via their telephones for solicitation purposes, thereby  
15 invading the privacy of said Plaintiff and the DNC Class members whose telephone  
16 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class  
17 members were damaged thereby.

18 30. Common questions of fact and law exist as to all members of The  
19 DNC Class which predominate over any questions affecting only individual  
20 members of The DNC Class. These common legal and factual questions, which do  
21 not vary between DNC Class members, and which may be determined without  
22 reference to the individual circumstances of any DNC Class members, include, but  
23 are not limited to, the following:

24 a. Whether, within the four years prior to the filing of this  
25 Complaint, Defendant or its agents placed more than one  
26 solicitation call to the members of the DNC Class whose  
27 telephone numbers were on the National Do-Not-Call Registry  
28 and who had not granted prior express consent to Defendant and

1 did not have an established business relationship with  
2 Defendant;

3 b. Whether Defendant obtained prior express written consent to  
4 place solicitation calls to Plaintiff or the DNC Class members'  
5 telephones;

6 c. Whether Plaintiff and the DNC Class member were damaged  
7 thereby, and the extent of damages for such violation; and

8 d. Whether Defendant and their agents should be enjoined from  
9 engaging in such conduct in the future.

10 31. As a person that received numerous solicitation calls from Defendant  
11 within a 12-month period, who had not granted Defendant prior express consent  
12 and did not have an established business relationship with Defendant, Plaintiff is  
13 asserting claims that are typical of the DNC Class.

14 32. Plaintiff will fairly and adequately protect the interests of the members  
15 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of  
16 class actions.

17 33. A class action is superior to other available methods of fair and  
18 efficient adjudication of this controversy, since individual litigation of the claims  
19 of all Classes members is impracticable. Even if every Classes member could  
20 afford individual litigation, the court system could not. It would be unduly  
21 burdensome to the courts in which individual litigation of numerous issues would  
22 proceed. Individualized litigation would also present the potential for varying,  
23 inconsistent, or contradictory judgments and would magnify the delay and expense  
24 to all parties and to the court system resulting from multiple trials of the same  
25 complex factual issues. By contrast, the conduct of this action as a class action  
26 presents fewer management difficulties, conserves the resources of the parties and  
27 of the court system, and protects the rights of each Classes member.

28 34. The prosecution of separate actions by individual Classes members

1 would create a risk of adjudications with respect to them that would, as a practical  
2 matter, be dispositive of the interests of the other Classes members not parties to  
3 such adjudications or that would substantially impair or impede the ability of such  
4 non-party Class members to protect their interests.

5 35. Defendant have acted or refused to act in respects generally applicable  
6 to The Classes, thereby making appropriate final and injunctive relief with regard  
7 to the members of the Classes as a whole.

8 **FIRST CAUSE OF ACTION**

9 **Negligent Violations of the Telephone Consumer Protection Act**

10 **47 U.S.C. §227(b).**

11 **On Behalf of the ATDS Class**

12 36. Plaintiff repeats and incorporates by reference into this cause of action  
13 the allegations set forth above.

14 37. The foregoing acts and omissions of Defendant constitute numerous  
15 and multiple negligent violations of the TCPA, including but not limited to each  
16 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular  
17 *47 U.S.C. § 227 (b)(1)(A)*.

18 38. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,  
19 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory  
20 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

21 39. Plaintiff and the ATDS Class members are also entitled to and seek  
22 injunctive relief prohibiting such conduct in the future.

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**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

**On Behalf of the ATDS Class**

40. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above.

41. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

42. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

43. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**THIRD CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(c)**

**On Behalf of the DNC Class**

44. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above.

45. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

1        46. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,  
2 Plaintiff and the DNC Class members are entitled an award of \$500.00 in statutory  
3 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

4        47. Plaintiff and the DNC Class members are also entitled to and seek  
5 injunctive relief prohibiting such conduct in the future.

6                    **FOURTH CAUSE OF ACTION**

7        **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
8                    **Act**

9                    **47 U.S.C. §227 et seq.**

10                   **On Behalf of the DNC Class**

11        48. Plaintiff repeats and incorporates by reference into this cause of action  
12 the allegations set forth above.

13        49. The foregoing acts and omissions of Defendant constitute numerous  
14 and multiple knowing and/or willful violations of the TCPA, including but not  
15 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,  
16 in particular *47 U.S.C. § 227 (c)(5)*.

17        50. As a result of Defendant's knowing and/or willful violations of *47*  
18 *U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of  
19 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*  
20 *§ 227(c)(5)*.

21        51. Plaintiff and the DNC Class members are also entitled to and seek  
22 injunctive relief prohibiting such conduct in the future.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection**

**Act**

**47 U.S.C. §227(b)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

**THIRD CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(c)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

**FOURTH CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(c)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

**JURY DEMAND**

52. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 10th Day of January, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman  
Todd M. Friedman  
Law Offices of Todd M. Friedman  
Attorney for Plaintiff